

LEGAL TECHNOLOGY AND EMERGING NEW FORMS OF ENTREPRENEURSHIP: THE CASE OF SOCIAL BUSINESS

Tomas Lavišius¹

Abstract

The European Commission declares that social economy gives a lot to the European Union. The Council of the European Union defines the social economy as a key driver of economic and social development in Europe. Therefore, this paper attempts to look at the case of regulating social business through the legal technology.

Usually legal technology refers to the use of technology and software to provide legal services. The scientists raise the question whether we need technology for the practice of law. If so, is the risk of using unproven or challenging legal technology products worth it? The scientists think that it is worth. They suggest that the approach should be to stop searching for what makes the law different and special, and instead focus on what makes it the same as other professional services. Moreover, the promotion of the rule of law by permitting ordinary citizens to actually make use of the powers granted to them by the legal system can be implemented also by using some legal technology.

In this light, we can speak about social entrepreneurship as an innovative way to tackle social problems. The legal status and recognition of social enterprise varies from state to state. It seems that no common agreement is found on the EU level as well. Therefore, we can ask whether the legal technology could catalyse development of legal preconditions for social entrepreneurship.

So far it is up to the particular country to decide whether the social enterprise is supposed to obtain special legal form or not. The connection of the legal technology with regulation of incorporation and maintenance of social enterprise also varies from state to state. The correlation between the above mentioned aspects is yet quite insignificant. Therefore, much more needs to be done at all levels of public policy to optimize the framework conditions for social enterprises.

Keywords: Legal technology, Social enterprise, Social business, Soft law

Introduction

¹ Tomas Lavišius is a PhD student at Mykolas Romeris Law School of Mykolas Romeris University. He is also a member of Mykolas Romeris University Justice Laboratory. His research field is the legal regulation and legal status of social enterprise (or social business) in the European Union. With respect to the novelty of the social entrepreneurship as the legal category and the lack of legal certainty, his research focuses on thorough examination of legal preconditions for social entrepreneurship in the European Union.

The hybridity of the legal status of social enterprise determines its coexistence somewhere between private company and NGO. Different methods, definitions and procedures are used in different countries to obtain the legal status of social enterprise. The European Commission defines a social enterprise as an operator in the social economy whose main objective is to have a social impact rather than make a profit for its owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.² It should be noted that the Communication of the Commission doesn't emphasize any specific form of legal entity as a social enterprise.

This paper raises the question, could possibly the legal technology contribute to the area of social entrepreneurship or is already contributing in some countries? This is the main question of this research.

Digitalization, the adoption of advanced technologies or the incorporation of artificial intelligence are leading to the emergence of new ways of working, producing and providing services. Because social economy companies do not completely fit into the European concepts of 'for-profit' or 'not-for-profit', this concept of 'limited profitability' should be recognized. In addition, for that reason some aspects of legal technology could be useful talking about the fostering of the concept of social entrepreneurship.

Therefore, the general purpose of this paper is to find out whether the legal technology could catalyse development of legal preconditions for social entrepreneurship. The convergence of legal technology and emerging new forms of business is quite new and original approach to research legal preconditions of social entrepreneurship. It can be relevant for researchers, policy makers and social businesses all around the EU.

Methodologically this research focuses on the legislation of European Union and some recent initiatives that were undertaken by several EU Member States in order to foster development of social business with help of legal technology. This research utilizes the qualitative research methods. The textual analysis method has been used to examine the content and meaning of legal texts and other documents, as well as their structure. The scope of the research covers the examination of the EU legislation regulating this area. It also covers the comparative analysis of social entrepreneurship legal regulation in several particular countries of the EU.

1. Theoretical preconditions and evolution of social economy

The European Economic and Social Committee highlights the figures that in 2016 there were 2.8 million social economy enterprises and organizations in the European Union that employed 13.6 million people and represented 8% of the EU's GDP. Therefore, the social economy is a crucial part of the EU socio-economic landscape.³

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Social Business Initiative. COM (2011) 682 final.

³ 'Recent evolutions of the Social Economy in the European Union' European Economic and Social Committee [2016],

Despite the social entrepreneurship has become a source of hope, people still know little about its origin. By their origin social entrepreneurs usually do not rely on business and government for the realisation of their ideas and aiming systematic change. Social entrepreneurs are usually promoted by the non-governmental organizations, the media, policy-makers, etc. They become branded and politicised actors.⁴ Researchers argue that the danger of an uncritical and exclusive promotion of a free and market based (social) system is obvious. However, there are areas where the state has a duty to act and to ensure the basic security of its citizens.⁵ Therefore, the question is, if the legal circumstances is a crucial factor for development of social entrepreneurship not only as a business form that aims to tackle social problems using business methods and applying social innovation but also as a societal phenomenon *per se*.

How can legal technology serve to development of this phenomenon as such? The legal technology industry is still growing, but the industry has quietly built up a number of new categories over the last few years such as electronic discovery, law practice management, and online legal services. However, there is still a lot of opportunity to improve processes within a legal industry still attached to manual and paper-based processes. Since the most of social enterprises innovate a lot, they need and sufficient innovative legal services. Here can be mentioned the concept of the Economy for the Common Good (ECG). It is a socioeconomic and political movement founded by Austrian economist Christian Felber in 2010. The ECG model's central proposition is that the economy should be at the service of people, i.e., of the common good. The ECG model is cross-disciplinary and applicable to all kinds of companies and organisations.⁶

The other question is whether the legal preconditions for social entrepreneurship can be evaluated separately from other factors. We must stress that beside the legal preconditions there are cultural, social, and economic preconditions of social entrepreneurship. We think that in this case a successful social entrepreneurship requires organization and participation. Therefore, in order to become a part of some organization, a legal status is usually required.

The social economy refers to a wide diversity of enterprises and organisations that share common values and features such as the primacy of the individual and the social objective over capital, a democratic governance, and the reinvestment of most of the profits (surpluses) to carry out sustainable development objectives and services of general interest.⁷

Different stakeholder groups, such as Social Economy Europe (SEE),⁸ propose to introduce a European commission recommendation establishing the main principles and

<https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/recent-evolutions-social-economy-study>

⁴ Ibid, 1.

⁵ R. Ziegler, 'Introduction: voices, preconditions, contexts', in Rafael Ziegler et al, An Introduction to Social Entrepreneurship: Voices, Preconditions, Contexts (Cheltenham, UK: Edward Elgar, 2009) 1.

⁶ Ibid, 104.

⁷ 'The Future of EU policies for the Social Economy: towards a European Action Plan' Social Economy Europe, <http://www.cecop.coop/The-Future-of-EU-policies-for-the-Social-Economy-towards-a-European-Action-Plan>

⁸ Social Economy Europe (SEE) was created in November 2000 under the name of CEP-CMAF – the European Standing Conference of Cooperatives, Mutuals, Associations and Foundations with the purpose of establishing a permanent dialogue between the social economy and the European Institutions. In 2008, CEP-CMAF changed its name and officially became the "Social Economy Europe". More about SEE: <http://www.socialeconomy.eu.org/>.

characteristics of the social economy, as well as its main legal forms: cooperatives, mutual organizations, associations, foundations, and social enterprises.⁹

Therefore, the common legal framework in the EU would serve fostering convergence and coherence between the different social economy legislations. Improving recognition and removing the existing barriers could help social economy enterprises to take full advantage of the single market of the EU through cross-border operations. So, such stakeholders as the SEE think that social economy can flourish only if a legal framework with suitable political, legislative and operational conditions is introduced at EU level. As mentioned above, the most of social enterprises innovate a lot and therefore they need sufficient innovative legal services. On the other hand, the social enterprise sector can use the opportunity to step in as the innovators in the field of legal technology start-ups, e.g. advocating different social and societal challenges. However, at this moment we don't have much of data on social enterprises or social enterprise start-ups that possibly work in the field of legal technology, therefore this could be the subject of future research.

2. Practical implications at the EU level

There is variety of social economy operators across the EU. They can be separated in two main groups – market producers and non-market producers. The group of market producers consists of non-financial corporations (e.g. cooperatives, social enterprises, other association-based enterprises, other private market producers), financial corporations (e.g. credit cooperatives, mutual insurance companies, insurance cooperatives), and general government. The group of non-market producers, on the other hand, consists of households and non-profit institutions serving households (e.g. social action associations, social action foundations, other non-profit organizations serving households: cultural, sports, etc.).

The third sector has become a meeting point for different concepts, fundamentally the 'non-profit' sector and the 'social economy', which, despite describing spheres with large overlapping areas, do not coincide exactly. Moreover, the theoretical approaches that have been developed from these concepts assign different functions to the third sector in the economies of today. We can briefly look at the main differences of the concept of social entrepreneurship in two continents. The main differences between the North American and European approaches to social enterprises have much to do with the different contexts in which they arose. In the United States, social enterprises have been a business response to social challenges traditionally served by social action non-profit organizations, which responded to cuts in public subsidies and private donations in the 1980s by developing business strategies to generate revenue to fund their philanthropic activities. In Western Europe, on the other hand, social enterprises arose to help solve structural problems of unemployment and groups with employability difficulties, as well as providing other social services targeting groups at risk of social exclusion. In other words, generally they were not set up to fund social action non-profit organizations but to solve problems of unemployment and social care for vulnerable social groups by means of a variety of productive activities.¹⁰

The other relevant definition is a 'collaborative economy'. We'll that in the context of the EU legislation it goes hand in hand with the 'social economy'. In its Communication

⁹ 'The Future of EU policies for the Social Economy: towards a European Action Plan' Social Economy Europe, <http://www.cecop.coop/The-Future-of-EU-policies-for-the-Social-Economy-towards-a-European-Action-Plan>

¹⁰ Ibid, 17-24.

called “A European agenda for the collaborative economy” (COM/2016/0356 final - 02/06/2016), the European Commission defines the collaborative economy as “business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals”. Moreover, the Communication identifies three categories of actors involved in the collaborative economy: a) service providers — private individuals or professionals; b) the users of these services, and c) intermediaries — via an online platform — that connect providers with users and that facilitate transactions between them (“collaborative platforms”). The Communication also emphasizes that collaborative-economy transactions do not involve a change of ownership and can be carried out for profit or not for profit.¹¹

Not only political but also financial institutions are involved in development of social entrepreneurship. The Social Impact Accelerator is a fund of funds created in 2015 by the European Investment Bank group and European Investment Fund (EIF) that targets social enterprises. It invests funds in social enterprises based on a new framework for quantifying and reporting on social impact metrics developed by EIF.¹² Although the sphere of financing of social entrepreneurship is not directly related with use of legal technology but we see that it hugely relies on the technological aspects, such as social impact metrics, etc.

3. Correlation between the soft law and legal technology

Usually legal technology refers to the use of technology and software to provide legal services. It is commonly associated with technology start-ups disrupting the practice of law by giving people access to online software that reduces or in some cases eliminates the need to consult a lawyer. The legal industry is widely seen to be conservative and traditional. However, the saturation of the market leads many lawyers to look for cutting-edge ways to compete accelerating the adoption of technology in law.

In this light we usually can speak not only about hard law, but also about the soft law measures. These soft law measures could be considered as tools to facilitate the self-regulation of particular business sectors. Self-regulation tools implemented with help of legal technology can be a significant step forward in order to promote social entrepreneurship and to facilitate unifying legal conditions for social enterprises in the EU. In the strict sense of the definition, legal technology may not be directly related with the soft law, however access to online software reduces or in some cases eliminates the need to consult a lawyer, can promote a simplified development of social entrepreneurship. In such case arrangement of private standards, guidelines, codes of conduct and forums for transnational dialogue can minimize the use of legal consultants, including legal technology as such.

In 2011, European Commission created a document: “Buying social: a Guide to taking account of social considerations in public procurement”. The Guide was a tool to help public authorities to buy goods and services in a socially responsible way in line with EU rules. It also highlighted the contribution public procurement can make to stimulate greater social inclusion. The Guide explained the wide range of possibilities offered by the EU public procurement rules to take social aspects on board in the various stages of the procurement

¹¹ Ibid, 26.

¹² ‘The Social Impact Accelerator’ European Investment Fund, http://www.eif.europa.eu/what_we_do/equity/sia/index.htm

process.¹³ It can be considered as a step towards more active use of soft-law measures in the regulation of social entrepreneurship. However, considering that the European Parliament and the Council in 2014 adopted a new Directive on public procurement¹⁴, the above-mentioned Guide should be revised as well in order to keep it up to date.

In this context we can raise the question on what level law can be separated from politics if it can be separated at all. Some scholars argue that the turn from law's myths to its facts, from the falsehood of law's neutrality to the truth of its politics, could only be accomplished by turning away from traditional jurisprudence to society and history (reality). Also they claim that their social and historical analysis had revealed law to be politics pure and simple, both past and present, law would no longer be able to resist politics on the spurious grounds that politics was something other than law. The result would be law opened to explicit political reimagination and change.¹⁵ It is quite controversial idea having in mind that the legislature creates a new legal regulation not accidentally, but with a specific purpose to meet a need of society, which requires such new legal regulation. Also there can be a lack of legal regulation, which occurs in society during the formation of new social phenomenon. Such lack of regulation also should be timely defined.

The future of applying soft law elements to the governance of social enterprise is still in the early phase of development. One can argue that one could measure intermediate results, such as the farmers' crop yields, but determining quality of life is more challenging. The absence of effective pay instruments for aligning managerial and stakeholder interests adds greatly to the costs of contracting for the production of charitable goods.¹⁶ Soft law elements can be compared with development of corporate social responsibility (CSR). Researchers argue that more than a decade ago corporate governance and CSR started as soft law initiatives, but later on have developed beyond being pure soft law instruments. Now their hard law elements are concerned with disclosure requirements. Corporate governance issues are often addressed in CSR reports, and CSR is becoming part of the corporate governance system. According to Directive 2003/51, companies have to disclose non-financial key performance indicators in their annual reports, including environmental and employee matters, to the extent necessary for an understanding of the company's development, performance or position.¹⁷ Of course, so far it is applicable to certain types of large listed companies. But it's plausible that at some level it could become a common practice in entities that act like social enterprise.

4. New regulatory approaches in the EU countries

Different EU countries undertake different regulatory initiatives regarding regulation of social business. We will see that some of the initiatives correlate with the legal technology and some not. However there is a clear tendency of movement towards the domain of the

¹³ 'Buying social: a Guide to taking account of social considerations in public procurement' European Commission, http://europa.eu/rapid/press-release_IP-11-105_en.htm

¹⁴ Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC [2014], OJ L 94.

¹⁵ Ch. Tomlins, 'Law 'And', Law 'In', Law 'As': The Definition, Rejection and Recuperation of the Socio-Legal Enterprise' [2013] *Law in Context* 29, no. 2, 138.

¹⁶ B. Galle, 'Social Enterprise: Who Needs It?' [2013] *Boston College Law Review* 54, no. 5, 2028, 2045.

¹⁷ D. Szabó, K.E. Sørensen, 'Integrating Corporate Social Responsibility in Corporate Governance Codes in the EU' [2013] *European Business Law Review*, no. 6, 789.

soft law and digital social innovation. Digital solutions to social challenges range from social networks for those living with chronic health conditions, to online platforms for citizen participation in policymaking, to using open data to create more transparency about public spending. This movement is frequently called a phenomenon of digital social innovation.¹⁸

Some experts emphasize that digital social innovation has a lot in common with other terms like “tech for good”, “civic tech” and “social tech”. We can see that they all heading in the same direction and share similar aims: to reorient technology to social ends; to use collective knowledge and skills to positive effect; to make government more accountable and transparent; to foster and promote alternatives to the dominant technological and business models — alternatives which are open and collaborative rather than closed and competitive.¹⁹ Digital social innovation uses a huge range of technologies - open hardware, peer-to-peer platforms, open data etc. And it is being used to tackle challenges in almost all areas, including education, healthcare, democracy, transparency and accountability, justice and many others.²⁰ Several examples in the EU countries show the tendency of the movement towards this direction.

In Denmark, a social enterprise must be defined as a company that has a social aim, sales products or services, reinvests any profits back in the company, and is democratic and citizen-oriented - it is legitimate in relation to its surroundings.²¹ Speaking about the use of legal technology, it should be stressed that Denmark is one of the easiest places in the world to fill out the formalities for starting a business. It is all done online and takes several minutes. When a person registers a venture online he or she instantly receives a company registration number and must choose which type of company he or she wants to register under. Despite the type of company, they are not defined as a social enterprise unless they follow the above mentioned characteristics.²²

In Denmark, the purpose of the Act on Registered Social Economic Companies is to create the basis for a common identity for social economy enterprises. It does not give any immediate financial or legal benefits after registering as a social economy company. Currently, the advantage is that it becomes easier to communicate to the outside world that one works from social economy principles.²³

E.g., Danish and British sector of social enterprise developed differently and the assigned role of social enterprises in each country is mostly different. Much of the UK activity in social enterprise and social investments has revolved around an outsourcing or acquisition of public sector services. In Denmark, the role of social enterprise has so far been more or less disconnected from the issue of gaps in public sector service. Instead, social enterprises have almost entirely been used as means of including people with some

¹⁸ ‘Digital Social Innovation’ Social Innovation Community, <https://www.siceurope.eu/network/digital-social-innovation>

¹⁹ ‘Digital social innovation is intimately related to all other areas of social innovation: an interview with our DSI network facilitator’ Social Innovation Community, <https://www.siceurope.eu/network/digital-social-innovation/digital-social-innovation-intimately-related-all-other-areas?conical=true>

²⁰ Ibid.

²¹ ‘What is a social enterprise’ Startupsvar.dk, <https://www.startupsvar.dk/social-enterprise>

²² Ibid.

²³ ‘Registreret socialøkonomisk virksomhed – RSV’ Startupsvar.dk, <https://www.startupsvar.dk/registreret-social-virksomhed>

form of disadvantage or disability into the ordinary labor market – in businesses or projects with no attachment to public service delivery.²⁴

We see that it's modern and innovative approach letting the social enterprises use legal technology is quite well developed and gaining its popularity with every year. Is it the case also in other countries?

In Sweden, social enterprises are generally understood as companies with the aim to reduce social exclusion and to provide efficient welfare services in a not-for-profit setting. Additionally, Sweden has had a long history of not-for-profit organizations with societal aims. Despite the level of institutionalisation of the different existing forms of social enterprises in Sweden remains low, social innovations are visible and take place in collaboration between the public sector, the private sector and civil society. It can be viewed as a new form of welfare ideas and as social innovation for the twenty-first century. When it comes to legal frameworks, two Swedish laws have come to influence the sector - The Public Procurement Act and The Law on Freedom of Choice that ensures the right of citizens to choose their own welfare service provider amongst the possible actors from the public, the private and the not-for-profit sector.²⁵ From the point of view of the legal technology, the Swedish private and not-for-profit sector provides a variety of soft tools for social entrepreneurs to create a legal status, come up with a business idea and develop it in several social innovation incubators or to use a national knowledge platform for social innovation and societal entrepreneurship.²⁶

In Finland, social enterprises are no different from other companies, as companies. They produce goods and services for the market and try to make a profit, the same as any other business. However, social enterprises have they separate legal framework – Act on Social Enterprises. According to the Act, the purpose of social enterprises is to create jobs in particular for the disabled and long-term unemployed. A social enterprise is a registered trader who is entered in the register of social enterprises.²⁷

Moreover, social entrepreneurs get the mark of certification (the Finnish Social Enterprise Mark) if they promote well-being, limit their distribution of profits and offer transparency of their business operations.²⁸ It's an innovative approach, based on a principle of self-regulation, which allows obtaining the social enterprise the additional status (label) besides the one that is described in the Law.

Estonia is one of two Baltic countries (besides Lithuania) that haven't developed a concrete legal framework for social entrepreneurship. However, it has to be mentioned that the sector has been actively developing for several decades. Most recently, the social enterprise concept and practical support measures were included into two national development plans as well as the new Public Procurement Law. Since there is no special legal structure for social enterprises in Estonia, registering as a "non-profit" is a default

²⁴ M. Bruhn Lohmann, 'What's the future of social enterprise in Denmark and the UK?' Social Innovation Community, <https://www.siceurope.eu/network/social-economy/whats-future-social-enterprise-denmark-and-uk>

²⁵ H. Thomas, R. Persson, N. Hafen, 'Social Enterprise, Social Innovation and Social Entrepreneurship in Sweden: A National Report' 24-25, 37, <https://sofisam.se/download/18.72b312e7163120a87495d6d6/1525433671511/EFESEIIS%20National%20Report%20Sweden.pdf>

²⁶ Ibid, 42.

²⁷ 'Act No. 1351/2003 on Social Enterprises' finlex.fi, <http://www.finlex.fi/en/laki/kaannokset/2003/en20031351.pdf>

²⁸ 'Social Entrepreneurship Rising in Finland' Business and Innovation. This is Finland, <https://finland.fi/business-innovation/social-entrepreneurship-rising-in-finland/>

option for social purpose initiatives there. More specifically, most of them are registered as so-called civil society organizations: either non-profit associations (governed by its members) or foundations (governed by a board). There are also a few limited liability companies identifying themselves as social enterprises.²⁹ Despite the limited legal recognition, on the level of self-regulation, social enterprise community of Estonia enjoys quite active advocacy from the association – Estonian Social Enterprise Network. Also several soft-law tools, such as “Social Impact Measurement Tools for Young Social Entrepreneurs”, are available.³⁰

Latvia is the only Baltic state so far, which has developed a concrete legal framework for social entrepreneurship. In 2017, the Latvian Parliament adopted new Law on Social Business, which foresees that a social enterprise is a limited liability company that has received the status of social enterprise pursuant to this law and that performs operations with a positive social impact.³¹ The status of social enterprise can be obtained online.

The Lithuanian Government so far adopted the Draft Law on the Social Business.³² This way the Government seeks to define the criteria and forms of social business, as well as the support measures in order to boost social economy. However, the Draft Law hasn't reached the step of the reading in the Parliament. So far, it is difficult to say whether some legal innovations will be introduced in the process of establishing and maintaining social business entity.

In comparison, United Kingdom has perhaps longest tradition in developing and promoting social entrepreneurship in the EU (regardless the ongoing process of Brexit). UK in 2005 established dedicated form of social enterprise – Community Interest Company.³³ The Community interest company is a structure specifically created for social enterprises. Legal technology is frequently used in creating (e-registration), supporting (online funding platforms) and maintaining (ethical standards and other soft law instruments) social enterprises. The Community interest companies enjoy a dedicated online incorporation process.³⁴

The examples from several countries show that the connection of the legal technology with regulation of incorporation and maintenance of social enterprise varies from state to state. The correlation between the use of legal technology and soft law is yet quite insignificant in the countries where the general legal preconditions for social entrepreneurship are underdeveloped and vice versa – where the legal environment for social entrepreneurship is advanced it correlates more frequently with the elements of legal technology and soft law.

²⁹ ‘Social Impact Measurement Tools for Young Social Entrepreneurs: Needs Analysis’ sev.ee, <https://sev.ee/wp-content/uploads/2017/06/kusif-needanalysis-26-10-16.pdf>

³⁰ ‘Know your Impact’ Social Impact Measurement tools for Young Social Entrepreneurs, <https://knowyourimpact.ku.edu.tr/the-project/>

³¹ ‘Saeima establishes legal framework for activities of social enterprises’ Latvijas Republikas Saeima [2017], <http://www.saeima.lv/en/news/saeima-news/26238-saeima-establishes-legal-framework-for-activities-of-social-enterprises>

³² ‘Lietuvos Respublikos socialinio verslo plėtros įstatymo projektas’ e-seimas, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/f6ed4d30ff9f11e89b04a534c5aaf5ce?positionInSearchResults=0&searchModelUUID=f56e3d9a-46cf-44e0-b119-c423ff4a6c5c>

³³ The Community Interest Company Regulations [2005], http://www.legislation.gov.uk/ukxi/2005/1788/pdfs/ukxi_20051788_en.pdf

³⁴ ‘Community Interest Companies’ Office of the Regulator of Community Interest Companies, <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

Despite some examples of the use of legal technology, the greatest potential of the synergy between legal technology and soft law in the field of social entrepreneurship is still untapped. The community of legal technology start-ups is familiar with such new area of legal service as legal research, notarization tools, intellectual property/trademark services, etc.,³⁵ which could be used by the social enterprises to lower the costs of their goods or services. On the other hand, the social enterprises can become start-ups providing above mentioned legal technology services tackling social problems. One from the up-to-date legal technology start-up databases³⁶ provides information that none of the above mentioned countries have a specialized legal technology start-up working exceptionally with social businesses, or operating as social business itself. However, there are several examples that are worth to mention despite they were out of the scope of this research. To everyone's surprise, the main examples of the legal technology start-ups that work with the goal of social mission can be found in India. Such start-ups like 'Ruly'³⁷, 'Law for Me'³⁸, or 'Lawtoons'³⁹ offer range of legal services and educational materials dedicated to people who can't afford traditional legal services. Some examples can be found also in Europe, e.g. German legal technology start-up 'Helpcheck'⁴⁰ defends consumers against big corporations and insurance companies, for those who might otherwise be deterred from pursuing their rights due to high legal fees.

Authors who research development of legal technology notice that in recent years clients have been more thorough with their billing and spending on legal services, resulting in a need to be more transparent and efficient.⁴¹ It seems that there is a good opportunity for social enterprise sector to step in with the affordable legal services based on legal technology.

Conclusions

Answering the question whether the legal technology could catalyse development of legal preconditions for social entrepreneurship highlights three tendencies.

The first, so far it is up to the particular country to decide whether the social enterprise is supposed to obtain special legal form or not. Therefore connection of the legal technology with regulation of incorporation and maintenance of social enterprise also varies from state to state. We can argue that the correlation between the above mentioned aspects is yet quite insignificant.

The second, the legal technology is already contributing to the area of social entrepreneurship in particular circumstances. We see that sphere of financing of social

³⁵ 'Legal Tech Market Map: 50 Startups Disrupting The Legal Industry' [2016], <https://www.cbinsights.com/research/legal-tech-market-map-company-list/>

³⁶ 'Legal Tech Startups' [2019], <https://airtable.com/shr74dsY3wZMwLMBg/tble1gLbY7XwrISQD/viwp8mj6JmaFozVVK?backgroundColor=blue&layout=card&blocks=hide>

³⁷ 'Ruly', <http://www.ruly.in/index>

³⁸ 'Law for Me', <http://lawforme.in/>

³⁹ 'Lawtoons', <http://www.lawtoons.in/>

⁴⁰ 'Helpcheck', <https://www.helpcheck.de/>

⁴¹ G. Miranda 'How Legaltech Startups are Revolutionizing the Legal Services Industry' LAWHEAD, <https://lawahead.ie.edu/how-legaltech-is-revolutionizing-the-legal-services-industry/>

entrepreneurship hugely relies on the technological aspects, such as social impact metrics, etc.

The third, soft law measures could be considered as tools to facilitate the self-regulation of particular business sectors. Self-regulation tools implemented with help of legal technology can be a significant step forward in order to promote social entrepreneurship and to facilitate unifying legal conditions for social enterprises in the EU. Giving social enterprise access to online software that reduces or in some cases eliminates the need to consult a lawyer, can promote a simplified development of social entrepreneurship. Moreover, arrangement of private standards, guidelines, codes of conduct, and forums for transnational dialogue can minimize the use of legal consultants, including legal technology as such. And additionally, CSR principles applicable to certain types of companies with help of soft law measures could become a common practice in entities that act like social enterprise.

Overall, there is a clear tendency of movement towards the domain of the soft law and digital social innovation. Therefore, much more needs to be done at all levels of public policy to optimize the framework conditions for social enterprises.

Bibliography

1. 'Act No. 1351/2003 on Social Enterprises' finlex.fi, <http://www.finlex.fi/en/laki/kaannokset/2003/en20031351.pdf>.
2. M. Bruhn Lohmann, 'What's the future of social enterprise in Denmark and the UK?' Social Innovation Community, <https://www.siceurope.eu/network/social-economy/whats-future-social-enterprise-denmark-and-uk>.
3. 'Buying social: a Guide to taking account of social considerations in public procurement' European Commission, http://europa.eu/rapid/press-release_IP-11-105_en.htm.
4. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Social Business Initiative. COM (2011) 682 final.
5. 'Community Interest Companies' Office of the Regulator of Community Interest Companies, <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>.
6. The Community Interest Company Regulations [2005], http://www.legislation.gov.uk/ukxi/2005/1788/pdfs/ukxi_20051788_en.pdf.
7. 'Digital social innovation is intimately related to all other areas of social innovation: an interview with our DSI network facilitator' Social Innovation Community, <https://www.siceurope.eu/network/digital-social-innovation/digital-social-innovation-intimately-related-all-other-areas?conical=true>.
8. 'Digital Social Innovation' Social Innovation Community, <https://www.siceurope.eu/network/digital-social-innovation>.
9. Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC [2014], OJ L 94.
10. 'The Future of EU policies for the Social Economy: towards a European Action Plan' Social Economy Europe, <http://www.cecop.coop/The-Future-of-EU-policies-for-the-Social-Economy-towards-a-European-Action-Plan>.

11. B. Galle, 'Social Enterprise: Who Needs It?' [2013] Boston College Law Review 54, no. 5, 2025-2045.
12. 'Helpcheck', <https://www.helpcheck.de/>.
13. 'Know your Impact' Social Impact Measurement tools for Young Social Entrepreneurs, <https://knowyourimpact.ku.edu.tr/the-project/>.
14. 'Law for Me', <http://lawforme.in/>.
15. 'Lawtoons', <http://www.lawtoons.in/>.
16. 'Legal Tech Market Map: 50 Startups Disrupting The Legal Industry' [2016], <https://www.cbinsights.com/research/legal-tech-market-map-company-list/>.
17. 'Legal Tech Startups' [2019], <https://airtable.com/shr74dsY3wZMwLMBg/tble1gLbY7XwrlSQD/viwp8mj6JmaFqZVK?backgroundColor=blue&layout=card&blocks=hide>.
18. 'Lietuvos Respublikos socialinio verslo plėtros įstatymo projektas' e-seimas [2018], <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/f6ed4d30ff9f11e89b04a534c5aaf5ce?positionInSearchResults=0&searchModelUUID=f56e3d9a-46cf-44e0-b119-c423ff4a6c5c>.
19. G. Miranda 'How Legaltech Startups are Revolutionizing the Legal Services Industry' LAWAHEAD, <https://lawahead.ie.edu/how-legaltech-is-revolutionizing-the-legal-services-industry/>.
20. 'Recent evolutions of the Social Economy in the European Union' European Economic and Social Committee [2016], <https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/recent-evolutions-social-economy-study>.
21. 'Registreret socialøkonomisk virksomhed – RSV' Startupsvar.dk, <https://www.startupsvar.dk/registreret-social-virksomhed>.
22. 'Ruly', <http://www.ruly.in/index>.
23. 'Saeima establishes legal framework for activities of social enterprises' Latvijas Republikas Saeima [2017], <http://www.saeima.lv/en/news/saeima-news/26238-saeima-establishes-legal-framework-for-activities-of-social-enterprises>.
24. 'Social Entrepreneurship Rising in Finland' Business and Innovation. This is Finland, <https://finland.fi/business-innovation/social-entrepreneurship-rising-in-finland/>.
25. 'The Social Impact Accelerator' European Investment Fund, http://www.eif.europa.eu/what_we_do/equity/sia/index.htm.
26. 'Social Impact Measurement Tools for Young Social Entrepreneurs: Needs Analysis' sev.ee, <https://sev.ee/wp-content/uploads/2017/06/kusif-needanalysis-26-10-16.pdf>.
27. D. Szabó, K.E. Sørensen, 'Integrating Corporate Social Responsibility in Corporate Governance Codes in the EU' [2013] European Business Law Review, no. 6, 781-828.
28. H. Thomas, R. Persson, N. Hafen, 'Social Enterprise, Social Innovation and Social Entrepreneurship in Sweden: A National Report', <https://sofisam.se/download/18.72b312e7163120a87495d6d6/1525433671511/EFESEIIS%20National%20Report%20Sweden.pdf>.
29. Ch. Tomlins, 'Law 'And', Law 'In', Law 'As': The Definition, Rejection and Recuperation of the Socio-Legal Enterprise' [2013] Law in Context 29, no. 2, 137-163.
30. 'What is a social enterprise' Startupsvar.dk, <https://www.startupsvar.dk/social-enterprise>.

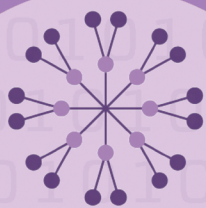
31. R. Ziegler, 'Introduction: voices, preconditions, contexts', in *Rafael Ziegler et al, An Introduction to Social Entrepreneurship: Voices, Preconditions, Contexts* (Cheltenham, UK: Edward Elgar, 2009) 1-20.

7th International Conference of
PhD Students and Young Researchers

LAW 2.0.

NEW METHODS, NEW LAWS

CONFERENCE PAPERS



INTERNATIONAL
NETWORK
OF DOCTORAL
STUDIES IN LAW

Vilnius University Press

2019

INFORMATION ABOUT THE CONFERENCE:

Venue: Vilnius University, Vilnius, Lithuania

Date: 25-26 APRIL 2019

Scientific Committee of the Conference:

Prof. Dr. Tomas Davulis, Faculty of Law, Vilnius University

Dr. Donatas Murauskas, Faculty of Law, Vilnius University

Prof. Dr. Monika Namyslowska, Faculty of Law and Administration, Lodz University

Dr. Vigita Vėbraitė, Faculty of Law, Vilnius University

Conference Papers Editions composed by:

Dr. Vigita Vėbraitė, Faculty of Law, Vilnius University

Karolina Mickutė, Faculty of Law, Vilnius University

Ieva Marija Ragaišytė, Faculty of Law, Vilnius University

ISBN 978-609-07-0264-2

© Vilnius University, 2019

Copyright © 2019 [Authors' Group]. Published by Vilnius University Press

This is an Open Access article distributed under the terms of the Creative Commons Attribution

Licence, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

FOREWORD BY THE ORGANISERS

We are delighted to present you the seventh edition of international conference papers of the PhD students and young researchers. This year once again the international conference has been devoted to very live and challenging topic “Law 2.0.: new methods, new laws“.

Law is traditionally conceived of as a slow moving, incremental, and conservative sphere and profession. Today is obvious that technology is rapidly transforming both the practice and nature of law. Technology, design, and social innovation are being applied within the legal services and it is usually acknowledged that methods of law and techniques of law making are also impacted. It is obvious that there is a necessity to discuss on scientific level new legal techniques. Conference papers address the methodological transition in law implied by technological development.

Diversity of topics and countries represented in the conference shows that in 2014 established International Network of Doctoral Studies in Law by Vilnius University Faculty of Law, Frankfurt am Main J.W. Goethe University Faculty of Law, Paris Nanterre University Faculty of Law and Lodz University Faculty of Law and Administration already created an international platform to develop academic and scientific activities, to enhance quality of doctoral studies in law and to help the interchange of information and ideas among PhD students and professors.

We hope that while we wait for the next year conference, this edition of papers will be a perfect way to deepen knowledge in many modern aspects of law and will be helpful for students, scholars and practitioners in different fields of interest.

Table of Contents

<i>THE OPENING OF PUBLIC DATA IN THE EUROPEAN UNION</i>	7
Annequin, Vincent	
<i>COMPANY GROUPS REGULATION: LEGAL AND TECHNOLOGICAL CHALLENGES</i>	18
Bakanauskas, Edvinas	
<i>COLLABORATION BETWEEN FINTECH FIRMS AND BANKS: AN OPPORTUNITY OR A CHALLENGE FOR THE EU BANK RECOVERY AND RESOLUTION LEGAL FRAMEWORK KEY OBJECTIVE?</i>	28
Balčiūnas, Laurynas	
<i>COMPARATIVE PERSPECTIVES ON DATA PROTECTION: INFORMATION SHARING IN LAW ENFORCEMENT</i>	41
Blount, Kelly	
<i>IMPACT OF TAX TECHNOLOGIES ON CURRENT AND FUTURE TAX COMPLIANCE</i>	49
Burneikaitė, Indra	
<i>TECHNO-LEGAL SYNERGY AND IMPLICATIONS FOR LEGAL RESEARCH: THROUGH THE EXAMPLE OF TRANS-DISCIPLINARY RESEARCH IN LAW AND LANGUAGE ENDANGERMENT</i>	59
Choudhary, Karan	
<i>OPEN DATA, TRANSPARENCY AND FIGHT AGAINST CORRUPTION IN PUBLIC PROCUREMENT</i>	66
Curan, Francois	
<i>Law 2.0 – Robots, Social Media and the Traditional Legal Framework</i>	78
De Bruyne, Jan, Vanleenhove, Cedric	
<i>RISKS RELATED TO THE USE OF BLOCKCHAIN AND THE RELEVANT CRIMINAL PROTECTION OF THE CRIMINAL LAW IN LATVIA</i>	93
Janums, Juris	
<i>THE USE OF BLOCKCHAIN TECHNOLOGY AS A NEW METHOD OF RECORDING LAND TRANSACTIONS</i>	103
Maria, Kaczorowska	
<i>A SMART APPROACH TO REGULATING THE SHARING ECONOMY SERVICES</i>	117
Kalniņa, Vija	
<i>ETHICAL AND DISCRETIONARY ASPECTS OF DECISION-MAKING IN THE CONTEXT OF DIGITAL RATIONALIZATION</i>	127
Kanarskiene, Lijana, Ruzgite, Egle	
<i>THE GRAMMAR OF THE CONSTITUTIONAL COUNCIL: A NEW PERSPECTIVE IN INQUIRING OF JUDICIAL DECISION-MAKING PROTOCOL</i>	139
Koskas, Michael	
<i>REGULATORY STRATEGIES FOR ACCOUNT INFORMATION SERVICE PROVIDERS (AISPs) AND PAYMENT INITIATION SERVICE PROVIDERS (PISPs) UNDER PSD2</i>	148
Krzemień, Marcin	

<i>TFEU 346: CHALLENGES AND POSSIBILITIES</i>	155
Kuzminskas, Vilius	
<i>LEGAL TECHNOLOGY AND EMERGING NEW FORMS OF ENTREPRENEURSHIP: THE CASE OF SOCIAL BUSINESS</i>	162
Lavišius, Tomas	
<i>CRYPTOCURRENCIES: A CHALLENGE FOR TAX REGULATION</i>	175
Liotta, Alessandro	
<i>THE UNMANNED AERIAL VEHICLE ON THE LEGAL HORIZON-AN INVASION OF THE RIGHT TO PRIVACY</i>	188
Lutek, Michał	
<i>COMMON LAW RIGHT TO ACCESS TO MEDICAL RECORDS: THE COMMONWEALTH AND EUROPEAN COURT OF HUMAN RIGHTS PRACTICE</i>	196
Lytvynenko, Anatoliy	
<i>DATA PORTABILITY THROUGH THE LENS OF COMPETITION LAW</i>	206
Małobęcka-Szwast, Iga	
<i>TO BE OR NOT TO BE... AN AUTHOR? SOME REMARKS ON COPYRIGHTABILITY OF ARTIFICIAL INTELLIGENCE'S WORK</i>	221
Michałowicz, Adrianna	
<i>MARKETABILITY OF DATA IN CONTRACT LAW</i>	232
Mörschardt, Benjamin	
<i>PASSENGER NAME RECORD (PNR) – AN EFFECTIVE TOOL IN FIGHT AGAINST TERRORISM OR AN UNFAIR LIMITATION OF OUR RIGHT TO PROTECTION OF PERSONAL DATA?</i>	241
Osiecki, Mateusz	
<i>DIGITAL AGENTS AND CONTRACTUAL PERFORMANCE – A CONTRIBUTION TO THE MODERN INTERPRETATION OF AN ATTRIBUTION STANDARD IN GERMAN CONTRACT LAW DUE TO THE RISING DEPLOYMENT OF ARTIFICIAL INTELLIGENCE</i>	249
Preßler, Theresa	
<i>ELECTRICALLY POWER-ASSISTED CYCLES (EPACs) AFTER THE EUROPEAN COMMISSION'S REFIT REVIEW AND PROPOSAL TO AMEND DIRECTIVE 2009/103/EC</i>	258
Shevchenko, Olga	
<i>THE ROLE OF SEMANTIC WEB IN THE MANAGEMENT OF LEGAL DATA</i>	271
Terekhov, Victor	
<i>WILL INTERNET PLATFORMS BECOME NEW STATES OF DIGITAL ECONOMY?</i>	283
Totoraitis, Laurynas	
<i>PROHACKTIVE POLICING: POLICE ACCESS TO IT-SYSTEMS IN CRIMINAL INVESTIGATIONS</i>	294
Urban, Lisa	
<i>THE CHALLENGES AND PERSPECTIVES FOR AN EFFECTIVE MERGER CONTROL IN DIGITAL MARKETS</i>	305